

Insurance/
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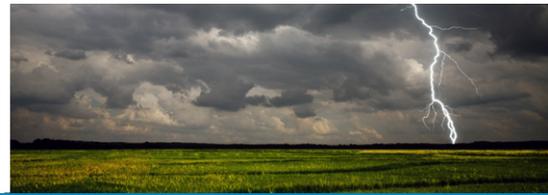
HFW to attend IBA Challenges for the Insurance Industry Conference

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hfw 1. Regulation and legislation

UK: Update on the Prudential Regulation Authority's (PRA) approach to the insurance objective

With responsibility for the prudential supervision of all authorised insurers in the UK, the PRA has the unenviable task of supervising approximately 600 insurance firms. That's on top of the approximately 1,000 banks, building societies, credit unions, and designated firms that it supervises. It is therefore unsurprising that the PRA is concerned to understand how it is performing against the PRA's insurance objective.

The PRA's statutory insurance objective requires the PRA to contribute to the securing of an appropriate degree of protection for those who are or may become insurance policyholders. The PRA stated that its role in protecting policyholders is to ensure that there is a reasonably high probability that an insurer is able to meet its obligations to policyholders and that, in the event an insurer is unable to meet those obligations, the consequences for policyholders are minimised by ensuring that the insurer fails in an orderly manner.

The Court of the Bank of England (the Bank's board, now known as the Prudential Regulation Committee (the PRC) commissioned its Independent Evaluation Office (the IEO) to assess the PRA's approach to its policyholder protection duties. The IEO was established in September 2014 as a core part of the Bank's strategic plan and is responsible for evaluating the Bank's performance. Whilst the IEO identified a lot of positives, it found



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that the PRA is lacking in articulating its approach to its policyholder protection responsibilities. The IEO recognised that a large body of work was undertaken by the PRA in respect of its insurance responsibilities in the period running up to, and immediately following, its inception but that this seemed to have been "crowded out" by live supervisory issues, as well as by the considerable work involved in implementing the Solvency II Directive (2009/138/EC).

In particular, the IEO's key recommendations were that the PRA needed to (i) articulate more fully its strategy and approach to its insurance objective, (ii) communicate, internally and externally, its preferred strategy and approach, (iii) clearly implement its preferred strategy and approach and, (iv) enhance its framework for co-ordination with the Financial Conduct Authority with respect to its insurance objective.

The PRA was accepting of the IEO's evaluation, which the PRA considers was an informative and

balanced assessment of the PRA's approach to its insurance objective. It published a full response, together with an action plan. The PRC plans to monitor the PRA's implementation of the recommendations as part of its wider follow-up framework for IEO reports. As a proactive measure, the PRA intends to present a paper to the PRC by September 2017, on the legal interpretation of the insurance objective, the interaction of the insurance objective with the general objective and the definition of regulatory failure.

A link to the IEO's complete report can be found at <http://www.bankofengland.co.uk/about/Documents/ieo/evaluation0317.pdf> and the link to the PRA's full response can be found at <http://www.bankofengland.co.uk/about/Documents/ieo/praresponse0317.pdf>.

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hfw 2. Court cases and arbitration

England and Wales: Parent company liability for the acts of foreign subsidiaries

In *AAA and others v Unilever Plc and another*¹, the English High Court considered the circumstances in which a UK domiciled company may face liability for actions largely attributable to a foreign domiciled subsidiary.

The court struck out the two claims against the UK-incorporated parent company, Unilever, concerning alleged liability for negligence for acts of violence committed by third parties against employees and local residents on a Kenyan tea plantation during disorder following the Kenyan presidential election in 2007. The claims were struck out on the basis that they were bound to fail due to an insufficient legal and factual connection with England and Wales. The claimants sought to rely upon the existence of a duty of care owed to them in negligence by Unilever. In seeking to establish that the existence of such a duty would be fair just and reasonable (per the “*Caparo*” test), the claimants relied upon *Chandler v Cape*², in which it was held that a parent company could owe a duty of care in negligence due to its “*assumption of responsibility*” for the acts of a subsidiary.

1 [2017] EWHC 371
2 [2012] 1 WLR 3111



The claimants have been given permission to appeal.

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The court has some discretion to allow a claim in these circumstances, where it is in the interests of justice to do so, for example where there is no possibility of redress for the claimant elsewhere. However, the judgment serves as a reminder of the difficulties that claimants will face in seeking to bring proceedings against foreign domiciled companies in the English courts where there is no connection with England and Wales. The judge held that it is unlikely that there will be the requisite connection, either legal or factual, in respect of claims against a foreign domiciled defendant, where neither the claimants, nor the location of the wrong doing and damage, are in England.

The claimants have been given permission to appeal.

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hfw 3. HFW publications and events

HFW to attend IBA Challenges for the Insurance Industry Conference

[Alison Proctor](#) (Senior Associate, London) will attend the 2017 IBA Challenges for the Insurance Industry Conference on 30 and 31 March in London.

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